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There is no question but that this book will serve its purpose admirably in giving to the German reader a scholarly and yet readable presentation of our governmental systems. It is to be hoped that the significant and interesting developments that have occurred in the two years since the book appeared, especially in our national government, will soon receive the same satisfactory treatment in a new edition of the work.

HERMAN G. JAMES.

The Legal Position of Trade Unions. By HENRY W. SCHLOESSER and W. SMITH CLARK. (London: P. S. King and Son, 1912. Pp. xxii, 268.)

One purpose of the authors of this book evidently was to furnish a complete exposition of the present English law of trade unions, and, so far as is known to the reviewer, the book is more comprehensive than any other on the subject except the recent book of Greenwood, *The Law Relating to Trade Unions* (1911).

The English law of trade unions, historically viewed, and as it stands today, is very interesting, but it is largely based on statutes. This book sets out the statutes in such detail, giving formal matters as important a place as substantial matters, that it is certainly not the book for one who wishes to get a general view of the subject. And this treatment sacrifices so much in clearness of exposition that it seems to the reviewer to constitute a defect for the purposes of use by the English lawyer or trade union official.

Evidently for the purpose of giving this general view, an introduction containing an historical account of the law and a sketch of its main features as existing, is prefixed. The historical account of "the struggle of the trade unions for legal recognition and freedom of action" is sufficient for the purposes of an introduction, but it is not comparable to Stephen's account in chapter xxx of his *History of the Criminal Law*, or to Dicey's account of the period from 1800 down, in his *Law and Opinion in England*. The sketch of the present law is not full and accurate enough to be of much value by itself, though a very accurate account can be written in fourteen pages, as witness Mr. Pease' article in the *Columbia Law Review* for November, 1912.

The discussion of "the legal personality of a trade union," which includes the interesting question of the powers of contract and liability in *tort* of these societies which are neither corporations nor voluntary

associations, is found in the body of the book, and though it is good, it is not nearly as clear as Mr. Geldart's exposition in his article in the *Harvard Law Review* for May, 1912, where he explains the law with reference to the common law of voluntary associations, i.e. the law of contract, agency and trust. The third part of the subject deals with "the limits of trade union interference with the conduct of the employer's business," which includes the law of torts and crimes as regards strikes, boycotting, picketing and the like. The quoted headings are not taken from the present book, but from Assinder's *Legal Position of Trade Unions*, and seem to constitute the most logical division of the subject. The present book makes a slightly different division, possibly on account of its detailed treatment. Assinder's small volume (second edition, 1912) discusses the history and the main questions of the present law, and while excellent so far as it goes, seems to me to discuss inadequately the effect of the Act of 1906 and does not discuss the question of restraint of trade, in connection with the enforceability of the rules of the society. Greenwood's volume is quite comprehensive but seems to the reviewer very diffuse and lacking in generalizations, in which respect the present work is preferable.

There seems to the reviewer to be some inaccuracies in the book which can be specifically pointed out.

In the introduction, it is stated on page 6: "The common law doctrine of restraint of trade constituted illegal all combinations of workmen to regulate the conditions of their work." This point is quite a controverted one, however, and to lose sight of this is to interpret erroneously all the cases in chapter iv, on restraint of trade. Again, on page 8, R vs. Byderdick, R vs. Selsby, and the Glasgow Cotten Spinners' case are spoken of simply as prosecutions for conspiracy, and give the impression that the conspiracy consisted in the combination to raise wages, whereas Bykerdick's case was a strike against nonunion men, Selsby's case involved unlawful picketing, and the Cotten Spinners' case acts of violence. And again, on page 12, it is stated that "one of the results of their status of illegality was that all resort to the courts for the purpose of preserving or recovering their property or funds was denied to them," but this is not correct in view of R. vs. Blackburn, 11 Cox, C. C. 157, and R. vs. Dodd, 18 L. T. 89.

The authors maintain (p. 60) that the oversight in the act of 1906, in not legalizing picketing for the purpose of communicating information when there is no trade dispute will result in the unlawfulness of such picketing. The case is, of course, a rather improbable one, but such

picketing is lawful at common law, and the Ward Lock Company case (1906-C. A.) seems to hold that picketing for the purpose of peaceful persuasion was lawful, thus virtually overruling *Lyons vs. Wilkins*.

On page 64 "Compulsion" under the conspiracy and protection of property act, 1865, is explained as if it were a substantive offense. The offense is "watching," "besetting" and "following" for the purpose of compulsion. The cases cited, *Peto vs. Apperley*, *Hale vs. Livingstone* and *Trollope vs. London*, etc., *Federation*, did not involve the specified acts and were not decided under the statute.

The discussion of liability for interfering with contractual relations is rather pre-digested. One cannot get a clear idea of *Allen vs. Flood* and *Quinn vs. Leatham* in a sentence, and some of the statements are very confusing, if not incorrect. Thus, it is said on page 70: "It is unlawful at common law, by illegal means, to prevent persons from entering into contracts as to the employment of labour or capital if there be no sufficient justification." Illegal means ordinarily denotes means illegal per se. Yet in explaining what is "justification," it is stated (p. 71): "Without malice to protect one's own legitimate trade or labour interests may be a justification." But this can never be a justification if the means are illegal, and a statement to this effect is found on page 73 in another connection.

Chapter Iv, on "Restraint of Trade," involves the question, when will benefit rules be enforced? which, under the act of 1871, rests on the question, is the society legal or illegal at common law? For if the society is illegal, the act provides that such rules cannot be "directly enforced" by the courts. The authors give an elaborate forty page analysis of some nine cases on this point. The lack of a statement of the facts of each case constitutes, however, a serious defect. The analysis is not convincing and a reading of the cases leads the writer to a different conclusion from that of the authors. It seems clear that a rule containing an agreement on the part of members to strike when called out by an organ of the union is sufficient to render the society illegal as in restraint of trade. This is the one clear and unfailing criterion, and runs back to *Hilton vs. Eckersley*, in 1853. Rules forbidding piece work and the like may render the society unlawful. If the benefit funds and the trade funds are separate, the benefit rules probably would be enforced. In regard to the main criterion, the authors argue that if striking is legal, they cannot see why compulsory strike rules should not be legal. They overlook the fact that the question asked is, not whether such rules are legal in the sense of criminal, but whether

they are contracts in restraint of trade and as such unenforceable. The benefit rules are not enforced because they are regarded as inextricably mixed up with illegal rules.

Chapter v, which is again an elaborate analysis of the cases on what is a direct enforcement, is unconvincing for the same reason as chapter iv.

The explanation of the change of definition in the act of 1876 (pp. 22-23) seems to me erroneous. Bulcock's case is cited, on page 70, under cases involving procuring breaches of contract, but there was no breach of contract in that case. There are more or less obvious misstatements on page 7 (parentheses in the wrong place), page 48, ("unless" should be "if" on line 14), page 52 (paragraph 2 is an ambiguous statement of §10 of the act of 1876).

W. B. HUNTING.

A History of French Private Law. By JEAN BRISSAUD. Translated from the second French edition by Ropelje Howell. (Boston: Little, Brown and Company, 1912. Pp. 922.)

This is the second volume to appear of the Continental Legal History Series published under the auspices of the Association of American Law Schools and under the direction of an editorial committee of which Dean Wigmore is chairman. Dean Wigmore furnishes a short introduction, as does also Mr. W. S. Holdsworth. The reviewer was at first surprised that the work of Esmein or of Viollet, which are probably better known to American students than is Brissaud's history, had not been selected for translation. The choice of the editorial committee is, however, well justified. The work deals far more comprehensively with the internal development of the law, that is, with the transformation of its substantive principles, than does the work of Esmein which, indeed, is devoted in very large measure to the external or institutional history of the French law. If the present volume of Brissaud were to stand alone, the reader would feel seriously the lack of an adequate description of French judicial institutions and their modes of operation but, so far as this need has not been supplied by the first volume of the series *A General Survey of Events, Sources, Persons and Movements in Continental Europe*—it will undoubtedly be met in the translation which is promised of Brissaud's *History of French Public Law*. The work under review, while resembling in scope and method the history of Viollet has the decided superiority over that work, to English and American readers, which Dean Wigmore points out in his introduction, that it